



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2004

Chief Don Hatcher
City of Leander
P.O. Box 319
Leander, Texas 78646-0319

OR2004-0431

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 194759.

The Leander Police Department (the "department") received a request for all documents concerning the towing of a vehicle from a specific address. You indicate that the department has provided the requestor with copies of three reports documenting calls for service. You claim that the remaining responsive information, a police in-car video recording and three internal memoranda, is excepted from disclosure under sections 552.108, 552.1175, and 552.119 of the Government Code.¹ We have reviewed the submitted information.

Initially, we note that the department has not fully complied with section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

¹The submitted videotape depicts a uniformed officer whom we presume to be a peace officer as defined by Article 2.12 of the Code of Criminal Procedure.

You indicate that the present request for information was received on October 28, 2003. However, you did not raise sections 552.108 or 552.1175 as exceptions to disclosure until November 19, 2003, well after the ten-business-day period mandated by section 552.301(b) of the Government Code. Because section 552.108 constitutes a discretionary exception to disclosure in this case, we find that you have waived this exception. *See* Gov't Code § 552.301, .302; *see also* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 522 (1989) (discretionary exceptions in general). However, because section 552.1175 provides a compelling reason to withhold the submitted information from disclosure, we will consider your arguments under that exception in addition to the timely claim made under section 552.119.

Section 552.1175 provides that information that relates to the home address, home telephone number, or social security number of a peace officer or that reveals whether the officer has family members is confidential if the officer chooses to restrict public access to the information and notifies the governmental body of this choice. *See* Gov't Code § 552.1175(b). However, the information at issue does not relate to the home address, home telephone number or social security number of the officer in question, nor does it reveal whether the officer has family members. The submitted information may therefore not be withheld pursuant to section 552.1175(b).

You also submit that the videotape depicting the officer may be withheld under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer, that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. However, you have not demonstrated, nor is it apparent from our review of the submitted information, that release of the videotape would endanger the life or physical safety of the officer depicted. We therefore determine that the department may not withhold the submitted videotape pursuant to section 552.119 of the Government Code. Because no exceptions to disclosure apply to the submitted information, it must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

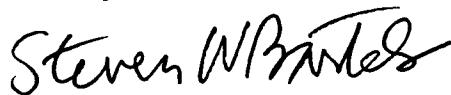
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 194759

Enc. Submitted documents

c: Mr. Richard Gauthier
1302 Tamarac Trail
Leander, Texas 78641
(w/o enclosures)